



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen M. Castille
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

October 25, 2005

Pinellas County
Nicole Elko
Coastal Coordinator
512 S. Ft. Harrison Avenue
Clearwater, Florida 33756

and

U.S. Army Corps of Engineers
Richard E. Bonner
P.O. Box 4970
Jacksonville, FL 32232-0019

Permit Modification Number:	0248254-004-EM
Permit Number:	52-292320-9, Pinellas County
Project Name:	Sand Key Beach Nourishment

Dear Ms. Elko:

Your request to modify Permit Number 52-292320-9 has been received and reviewed by Department of Environmental Protection (Department) staff. The proposed permit modification is the addition of a dune feature to be constructed from DEP Range Monument R-60 to 200 feet south of R-61A. The proposed dune is to be constructed to an elevation of +9 ft MLW with side slopes of 1 (Vertical) to 3 (Horizontal) and a width of 25 feet.

PERMIT HISTORY

Portions of Sand Key have been nourished in several phases since 1988. In 1988, Phase I restored 1.5 miles of shoreline at North Redington Beach and Redington Shores with approximately 525,000 cubic yards of sand. In 1990, Phase II provided 1.3 million cubic yards of material along approximately 3 miles of the Indian Rocks Beach shoreline. In 1992, Phase III restored 2.9 miles of Indian Shores with the placement of 850,000 cubic yards of beach sand.

"More Protection, Less Process"

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Permit Number 52-292320-9, which was issued on February 13, 1997, authorized the nourishment of the beaches for Phase IV of the Sand Key project. This project occurred in 1997 and 1998 and included the initial restoration of the City of Clearwater and Belleair Beach and the nourishment of North Redington Beach, Redington Shores, Indian Shores and Indian Rocks Beach. During the Phase IV project, 2.6 million cubic yards of beach quality sand was dredged from Egmont Shoal, barged to the site, and hydraulically pumped along 9.3 miles of shoreline from DEP Range Monument R-56 to R-66 and R-71 to R-107. The stretch of beach known as Belleair Shores (between R-66 to R-71) was not included due to the lack of public access. In order to maintain the project dimensions, subsequent nourishment events were authorized under Permit Number 52-292320-9, allowing the placement of approximately 645,000 cubic yards of beach quality sand every 5 years until the permit expiration date of February 13, 2007.

The beach fill placement sites are located within the Pinellas County Aquatic Preserve, an Outstanding Florida Water. Variance Number VE-52-715 was issued on February 13, 1997 and authorizes relief from Rule 62-4.242(2)(a)2b, Florida Administrative Code (F.A.C.) by allowing the temporary elevation of turbidity up to 29 nephelometric turbidity units (NTU's) above natural background levels at the edge of a 150 meter mixing zone associated with the activities authorized by Permit Number 52-292320-9. This variance is valid for the duration of Permit Number 52-292320-9, through February 13, 2007.

Artificial Reef and Biological Monitoring

As a result of the activities authorized in Permit Number 52-292320-9, 5.3 acres of nearshore hardbottom communities were directly impacted. As mitigation, Pinellas County was required to construct at least 7.95 acres of artificial reef in the nearshore zone along Sand Key, monitor the success of mitigation, and provide additional mitigation, if needed. Pinellas County chose to construct the 7.95 acres of mitigation in 16 artificial reef modules. Pinellas County completed construction of the artificial reef during the summer of 2005 with the construction of modules 15 and 16. Biological monitoring of the first 14 constructed artificial reef modules was completed in April 2005.

The Department is currently processing a new Joint Coastal Permit Application (File Number 0238664-001-JC) for continued nourishment of Sand Key. This application, which was submitted by Pinellas County on October 7, 2004, is still incomplete at this time. Due to the lack of current data on the nearshore hardbottom communities, the Department has required a nearshore hardbottom survey be completed by October 1, 2005, as a completeness item for Joint Coastal Permit Application Number 0238664-001-JC. By completing the nearshore hardbottom survey by October 1, 2005, the nearshore hardbottom communities and locations can be catalogued as a baseline for future nourishment events. The purpose for requiring completion by October 1, 2005 was to capture data before nourishment material, placed during the 2005

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nourishment event, equilibrates and obscures the baseline extent and condition of the hardbottom communities.

Permit Modifications

The following permit modifications relate to the nourishment project constructed in 1997 and 1998 under Permit Number 52-292320-9:

The first modification, issued by letter on September 22, 1998, authorized a maximum berm width of 185 feet for the project area between DEP Range Monuments R-56 and R-66. This modification was valid for the 1998 project only. The modification application specifically stated that, due to the placement of material that was coarser than expected, the profile did not adjust as predicted and a wider berm was necessary to achieve the design template. The project description was modified to specify that fill placement was not to exceed the equilibrium toe-of-fill (ETOF) line depicted in the original permit drawings. Since the permit modification requires that no fill exceed the seaward extent of the permitted ETOF line, no additional impacts to the nearshore hardbottom communities were expected to occur from activities authorized by the modification.

A second modification to Permit Number 52-292320-9 was issued by letter on December 22, 1998, authorizing placement of 1,200 cubic yards of additional beach fill near DEP Range Monument R-56. The additional fill was necessary to fill a depression in the berm that developed after construction. The modification allowed the depression to be constructed to the approved fill template. This modification was issued for work that occurred in January 1999 and is not applicable to subsequent projects.

On June 30, 1999, the third modification was issued by letter authorizing the extension and widening of the construction staging area and pipeline corridor located offshore of DEP Range Monument R-87 (corridor #1). No hardbottom was determined to be impacted by the activities authorized in this modification.

On July 21, 1999, the fourth modification was issued by letter authorizing the extension and widening of the construction staging areas and pipeline corridors located offshore of DEP Range Monuments R-99A (corridor #2) and R-103A (corridor #3). No hardbottom was determined to be impacted by the activities authorized in this modification.

The following permit modifications relate to the nourishment project scheduled for commencement in 2005:

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On June 17, 2005, Permit Modification Numbers 0248254-001-EM and 0248254-002-EM were issued to Pinellas County (modifying Permit No. 52-292320-9). Permit Modification Number 0248254-001-EM authorized extension of the berm 50 feet seaward from DEP Range Monuments R-56 and R-66. The extension creates a maximum berm width of 185 feet at elevation +6 feet MLW with a 20:1 slope to the MLW line and then a 15:1 slope to the toe of fill. The berm extension was also permitted by letter on September 22, 1998 as described above. No clear monitoring data exists to show if the extension constructed during the restoration event exceeded the ETOF. In order to fully understand if the berm extension causes the ETOF to exceed its predicted seaward position for the 2005 event, the Department required a biological survey of the nearshore hardbottom be completed by October 1, 2005. The permit modification also included the requirement that an updated physical monitoring plan be submitted for review and approval prior to issuance of the Notice to Proceed. To date, the County has completed the sand/hardbottom border survey, but has not completed the hardbottom characterization survey.

Permit Modification Number 0248254-002-EM authorized the extension of the borrow area limits and an in-water disposal area, located north of Egmont Key at approximately 82°, 45.5'W and 38°, 36.5'N, for rocks encountered during dredging. The permit modification required that a sediment Quality Assurance / Quality Control Plan (QA/QC) be submitted and approved by the Department prior to issuance of the Notice to Proceed. The sediment QA/QC includes assurance of compliance with 62B-41.007(2)(j), F.A.C. by requiring beach sampling during construction, rock removal during dredging, electronic positioning equipment documenting dredge location, and remediation for any unacceptable material placed on the beach.

The Department issued the Notice to Proceed for the 2005 event on July 6, 2005, following review and approval of the physical monitoring plan, sediment QA/QC, final plans, and specifications.

On September 23, 2005, Permit Modification Number 0248254-003-EM (modifying Permit No. 52-292320-9) authorized an extension of the pipeline corridor located offshore of DEP Range Monument R-60 to accommodate additional pipeline length and the Norfolk Dredging scow unloader, the *Vicksburg*. The approved pipeline corridor extends 5,200 feet offshore and terminates in a work area that is located in 19 feet of water and measures 1,100 feet by 500 feet. Review of the underwater video submitted by the permittee confirmed that the transects contain no significant hardbottom resources. However, if any areas of significant resource concern are found during construction, the modification states that, "the permittee shall avoid those areas."

MODIFICATION REQUEST

On September 6, 2005 the Department received an application from Pinellas County requesting the addition of a dune feature to be constructed from DEP Range Monument R-60 to 200 feet

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south of R-61A. The proposed dune is to be constructed to an elevation of +9 ft MLW with side slopes of 1 (Vertical) to 3 (Horizontal) and a width of 25 feet.

The dune is to be planted with sea oats (*Uniola paniculata*) along the entire length of the dune, on the 7-foot wide crest and the seaward 9-foot wide slope. The sea oats will be planted eight inches deep on 18-inch centers along the top and seaward edge of the dune.

STAFF ASSESSMENT OF MODIFICATION REQUEST

The location of the proposed dune is the area of highest erosion on north Sand Key. A dune in this location will provide greater storm protection for the upland infrastructure over the life of the nourishment project. The additional 3 feet of elevation above the nourishment template will provide additional protection against overtopping during storm events.

The dune is sited seaward of the Erosion Control Line (ECL), which is state-owned land. The dune construction requires a proprietary authorization, as the activity is located on sovereignty submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, Florida Statutes (F.S.). The activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this proprietary authorization has been reviewed in accordance with Chapters 253 and 258, F.S., Chapters 18-21 and 18-20, F.A.C., and the policies of the Board of Trustees.

The dune will be constructed of the same material used to construct the beach nourishment project. The material was determined to be beach compatible when the Department reviewed the offshore borrow area for use in the beach nourishment project.

Department staff have found that the construction of a dune will not adversely affect the coastal system and will provide additional protection to the beach and upland properties. The dune is sited seaward of the established Erosion Control Line and as such requires a Letter of Consent from the Department to utilize the state owned lands.

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The project description shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The project is to nourish the beaches along the barrier island known as Sand Key by initially hydraulic dredging approximately 2,088,200 cubic yards of beach quality sand from the Egmont Channel Shoal, directly discharging the material onto the beach, and maintaining the project dimensions by renourishing with approximately 645,500 cubic yards of material every 5 years. The 9.3 miles of shoreline to be nourished extend from DNR monument R-56 to R-66 and R-71 to R-107. The stretch of beach known as Belleair Shores (between R-66 to R-71) will not be nourished. The project design consists of a varying berm width of approximately 135 feet at an elevation of +6.0 feet MLW with a 1 foot vertical on 20 foot horizontal foreshore slope to mean low water, then a 1 foot vertical on 30 foot horizontal slope to the existing bottom. For the initial acceptance section only (between R-66 and R-56), a maximum berm width of 185 ft. is authorized during the 1998 and 2005 projects. The project also includes a dune feature from DEP Range Monument R-60 to 200 feet south of R-61A, with an elevation of +9 ft MLW, side slopes of 1 (Vertical) to 3 (Horizontal) and a width of 25 feet. Fill placement shall not exceed the original equilibrium toe-of-fill depicted in the original permit drawings. Rocks encountered during dredging may be placed in a 70 foot deep hole located north of Egmont Key at approximately 82°, 45.5'W and 38°, 36.5'N. As mitigation, Pinellas County will construct at least 7.95 acres of artificial reefs in the nearshore zone along Sand Key, monitor the success of mitigation, and provide additional mitigation, if needed.

Permit drawing W 103A, depicting the dune construction template, shall be inserted into the set of approved drawings that are attached to the permit (as modified).

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and will not change the determination that the project is clearly in the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles, their hatchlings, or their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawing, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **February 13, 2007** expiration date, Specific or General

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Conditions, or monitoring requirements of the permit. This letter and the accompanying permit drawing W 103A must be attached to the original permit.

As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity qualifies for a consent to use as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted, pursuant to Chapter 253.77, Florida Statutes (F.S.), to perform the activity on the specified state owned lands.

Therefore, the Department of Environmental Protection hereby grants consent of use to the U.S. Army Corps of Engineers and Pinellas County to conduct the dune restoration activity on sovereignty submerged lands, pursuant to Chapter 253.77, F.S.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the

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running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

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- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

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If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7728.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

Enclosure: Permit Drawing W 103A

cc:

Nicole Elko, Pinellas County
Jackie Keiser, USACE Jacksonville
Glen Schuster, USACE Jacksonville
Randy Runnels, DEP CAMA
Jim LaGrone, DEP BBCS
Jennifer Koch, DEP BBCS
Lainie Edwards, DEP BBCS
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Ralph Clark, DEP BBCS
Lizbeth Meigs, DEP BBCS
Vladimir Kosmynin, DEP BBCS
Christina Staten, DEP BBCS
BBCS Permit File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.


Deputy Clerk


Date